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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/831,726

01/15/2005

Michel Banatre

CAB 110NP

9694

23995

7590

01/17/2006

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EXAMINER

MEHRPOUR, NAGHMEH

ART UNIT

PAPER NUMBER

2686

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,726

Applicant(s)

BANATRE ET AL.

Examiner

Naghmeh Mehrpour

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/15/0110/17/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement filed reference listed in the information Disclosure Submitted on 05/15/01, 10/17/05 have been considered by the examiner (see attached PTO-1449

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,901,261.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject. In re Goodman 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). Because they user short range to establish a short radio RF inside a selected zone between a hand unit and a mobile unit providing at least one application by using location of the equipments.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11, are rejected under 35 U.S.C. 103(a) as being unpatentable over by Leifer (US patent 6,782,974 B2) in view of Balogi et al. (US Publication 2002/0022453)

Regarding claims 1, 3, 7, Leifer teaches a Mobile telephony method process (col 3 lines 24-40) wherein;

a) provision is made for at least one application capable of processing the position of a user carrying a handheld unit (Ui) to modulate at least some characteristics of said application (col 7 lines 25-35);

b) provision is made for at least one access terminal (Bai) belonging to a selected communications infrastructure, to enable at least one user handheld unit (Ui) to access said application over a selected geographical coverage (Z2) (col 3 lines 25-35, col 4 lines 50-67);

(Z2) (col 3 lines 25-35, col 4 lines 50-67);

c) provision is made for at least one mobile station (SMi) distributed in the coverage zone (Z2) of the access terminal (Bai) (col 3 lines 25-35, col 7 lines 25-30).

Leifer fails to teach d) the mobile station (SMi) is equipped with means of communication capable of establishing a short-range radiofrequency communication inside a selected perimeter (P1, P2) between the use handheld unit (Ui) and the mobile station (SM), and e) at least one user handheld unit (Ui) 20 is equipped with means of short-range radiofrequency communication interconnecting with those of the mobile station (SMi) to establish said short-range radiofrequency communication inside the selected perimeter (P1, P2) between the handheld unit (Ui) 20 and the mobile station (SMi) which enables said use handheld unit (Ui) to communicate with the mobile station (SMi) and with the access terminal (Bai) in order to access said application adapted according to the position of the user.

However Balog teaches mobile communication network wherein

d) the mobile station (SMi) is equipped with means of communication capable of establishing a short-range radiofrequency communication inside a selected perimeter (P1, P2) between the use handheld unit (Ui) and the mobile station (SM) (0040); and e) at least one user handheld unit (Ui) 20 is equipped with means of short-range radiofrequency communication interconnecting with those of the mobile station (SMi) to establish said short-range radiofrequency communication inside the selected perimeter (P1, P2) between the handheld unit (Ui) and the mobile station (SMi) (0040);

which enables said use handheld unit (Ui) to communicate with the mobile station (SMi) and with the access terminal (Bai) in order to access said application adapted according to the position of the user (0041). Therefore, it would have been obvious to ordinary skill in the art at the time the invention was made to combine the above teaching of Balog with Leifer, in order to deliver content to a plurality of mobile devices communicatively coupled to each other via more advance system.

Regarding claim 2, Leifer teaches a method according to claim 1, wherein in that at least some of the application belong to the group formed by the absence/presence of the user, and billing of said application (col 4 lines 25-50)

Regarding claim 4, Leifer teaches a method wherein in that the mobile station (SMi) is capable of establishing communication with the access terminal (Bai), the mobile station (SMi), thereby playing the role of a handheld unit.

Regarding claim 5, Leifer teaches a method wherein in that provision is made for a communications infrastructure belonging to the group formed by the global cellular network of the type GSM, UMTS, and the local network of the ad hoc type (col 3 lines 30-41).

Regarding claim 6, Leifer teaches a method wherein a handheld unit belonging to the group formed by the mobile telephones (col 3 lines 25-41, col 7 lines 25-34)

Regarding claims 8-11, Leifer teaches a System/apparatus wherein at least one access terminal (Bai) belonging to a selected communication infrastructure, to enable at least one user handheld unit (Ui) to access a selected application over a selected geographical coverage (Z2) (col 4 lines 20-50), said application being capable of processing the position of a use carrying a hand unit to modulate at least of application (col 4 lines 50-65). Leifer fails to teach at least one mobile station (SMi) distributed in the coverage zone (Z2) of the access terminal (Bai), said mobile station including means of communication capable of establishing short-range radiofrequency communication inside a selected perimeter (P1, P2) between the handheld unit (Ui) and the mobile station (SMi); and at least one use handheld unit incorporating means of short-range radiofrequency interconnecting with those of the mobile station (SMi) to establish said short-range radiofrequency inside the selected perimeter (P2, P2) between the handheld unit (Ui) and the mobile station (SMi) said user handheld unit (Ui) being capable of communicating with the mobile station (SMi) and with the access terminal (Bai) in order to access said application adapted according to the position of the user. However Balog teaches at least one mobile station (SMi) distributed in the coverage zone (Z2) of the access terminal (Bai), said mobile station including means of communication capable of

establishing short-range radiofrequency communication inside a selected perimeter (P1, P2) between the handheld unit (Ui) and the mobile station (SMi) (0040); and at least one use handheld unit incorporating means of short-range radiofrequency interconnecting with those of the mobile station (SMi) to establish said short-range radiofrequency inside the selected perimeter (P2, P2) between the handheld unit (Ui) and the mobile station (SMi) said user handheld unit (Ui) being capable of communicating with the mobile station (SMi) and with the access terminal (Bai) in order to access said application adapted according to the position of the user (0036, 0041). Therefore, it would have been obvious to ordinary skill in the art at the time the invention was made to combine the above teaching of Balog with Leifer, in order to deliver content to a plurality of mobile devices communicatively coupled to each other via more advance system.

Response to Arguments

6. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

In response to the applicant's argument that "the set of claims for case 09980273 should be use, instead of claims for 09831726", examiner suggests that applicant's submit claims 1-11 of U.S application 09/980,273 for US application number 09831726, in order to straight the record. The U.S Patent Office records shows that claims 1-21, of U.S application 09/831,76, as originally have been filed by the Rabin firm.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Busoo et al. (US Patent 46,625,456) disclose mobile system enabling location associated messages

Thompson et al. (US Publication 2004/0214572 A1) disclose sysem concurrently utilizing multiple system identifiers

8. **Any responses to this action should be mailed to:**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naghmeh Mehrpour whose telephone number is 571-272-7913. The examiner can normally be reached on 8:00- 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold be reached (571) 272-7905.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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January 11, 2006


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